

REMARKS

Reconsideration and further examination of the subject application, in view of the remarks below, are respectfully requested.

Status of Claims

Claims 1-8 and 11-24 remain pending in the application. Each of these claims is under consideration.

Claim Rejection – 35 U.S.C. § 102

In the Office Action, claims 1-8 and 11-24 stand rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 6,756,350 to Giblin et al. ("Giblin"). For the following reasons, this rejection should be withdrawn.

Giblin does not disclose or suggest each feature of the present invention. For example, Giblin does not disclose or suggest an extruded polymer composition.

In response to this distinction, the Examiner argues that this is an intended future use of the composition. We respectfully disagree. The term used in the claim is "extruded." It is in the past tense, which indicates that it is not an intended future use, but rather a characteristic of the claimed composition.

The Examiner also argues that "[i]t is extremely and vastly well known that bottles of such material may be prepared from various types of extruding methods." This argument, however, is not relevant to an anticipation rejection, because even if true, the reference still does not expressly or inherently disclose an extruded composition. Absent such a disclosure, Giblin does not anticipate the present claims.

Moreover, should the Examiner continue to rely on this argument, we ask that the Examiner cite a reference to establish that such a proposition is indeed true. Giblin discloses bottles or containers; yet it does not mention that such bottles or containers can be formed by extrusion.

Giblin also does not disclose or suggest a polymer composition comprising the specific combination of a polyester, at least one UV absorber, and at least one optical brightener as recited in the present claims.

In response to this argument, the Examiner argues that “[o]ne of ordinary skill would, according to the desired product and as a matter of routine experimentation, ascertain which combination should be employed.” However, the Examiner does not explain how a person of ordinary skill in the art would arrive at the claimed invention through “routine experimentation” based on the teachings of Giblin. It is unclear that persons skilled in the art would arrive at the claimed invention in light of Giblin’s teaching that (1) “UV absorbers for inclusion in bottle material are expensive, and must be added when the bottle material is hot and molten and there is a risk of burning the operator” (col. 1, lines 35-38); and (2) “[p]referably, UV absorbers are excluded or essentially excluded from both the container and the formulation” (col. 2, lines 44-45). Thus, Giblin discourages persons skilled in the art from making a bottle with UV absorbers.

Additionally, the need to employ routine experimentation to arrive at the claimed invention undermines the allegation that Giblin anticipates the claims, since anticipation requires the reference to disclose the identical invention as the claim. Richardson v. Suzuki Motor Co., 868 F.2d 1226, 1236 (Fed. Cir. 1989).

The Examiner further argues that choosing polyethylene terephthalate (PET) would have been “an obvious choice” from the list in Giblin because PET is “more widely and commonly used for the preparation of packaging, such as bottles etc.” Again, we ask the Examiner to provide a basis for this assertion because Giblin does not support it. Giblin does not disclose a preference for using PET even though it is alleged in the Office Action that PET is “more widely and commonly used”. Also, by relying on “an obvious choice” theory, the Examiner casts doubt on whether the rejection is properly based on anticipation.

Finally, the Examiner finds Giblin’s preference not to use UV absorbers unpersuasive of the patentability of the present claims. In support, the Examiner cites claim 4, which mentions UV absorbers. However, to understand Giblin’s teachings, it must be kept in mind that Giblin discloses both bottles and detergent compositions to be held in the bottles. See col. 1, lines 54 – col. 2, line 6; col. 2, line 51; col. 12, line 6.

While UV absorbers are mentioned a lot in Giblin, their context must be considered in relation to what Giblin discloses. In connection with bottles, Giblin discloses that UV absorbers are expensive, and adding them exposes the operator to burning. Col. 1, lines 35-38. Because of these drawbacks, Giblin prefers to exclude UV absorbers from the containers or bottles. Col. 2, lines 44-45. In describing the packaging material and label, Giblin does not mention the inclusion of UV absorbers, or optical brighteners for that matter. See col. 12, line 6 – col. 13, line 4.

On the other hand, while Giblin also mentions that UV absorbers are not preferred for the detergent composition (col. 2, lines 44-45), when describing the detergent composition, Giblin discloses that UV absorbers are an optional ingredient. See col. 10, lines 9-41. It is in this context that Giblin discloses the presence of a UV absorber in claim 4. Note that claim 1 is directed to a package in combination with a heavy duty liquid composition. Claim 4 is directed to the liquid composition, rather than the package. Thus, claim 4 does not disclose a package material that comprises a UV absorber.

With this understanding in mind, it is important to note that Giblin does not disclose a polymer composition that comprises a polyester, a UV absorber, and an optical brightener. Optical brighteners are only mentioned in Giblin in the context of the detergent composition. Col. 11, lines 27-34. The PET, on the other hand, is only mentioned in the context of the packaging material. Col. 12, lines 10-14. Giblin never discloses or suggests both the polyester and the optical brightener in the same composition, much less the combination of the two with a UV absorber. In this connection, the word “extruded” in the claims helps to distinguish over Giblin by signifying that the optical brightener and the polyester exist in the same phase, whereas in Giblin, they are in separate phases -- one in the liquid detergent composition and the other in the solid container material.

For the foregoing reasons, Giblin fails to anticipate the present claims, and the rejection should be withdrawn.

Conclusion

In summary, Applicants believe the application to be in condition for allowance. Accordingly, the Examiner is respectfully requested to reconsider the rejection(s), remove all rejections, and pass the application to issuance.

Respectfully submitted,

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CERTIFICATE OF MAILING UNDER 37 CFR 1.8(a)

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Date